# In the Supreme Court of the United States

OCTOBER TERM, 1973

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No. 73-1275

NATURAL GAS PIPELINE COMPANY OF AMERICA,
PETITIONER

*v.*

TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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## MEMORANDUM FOR THE FEDERAL POWER COMMISSION

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The court of appeals set aside an order of the Federal Power Commission authorizing a group of natural gas producers to abandon their sales of gas to Transcontinental Gas Pipe Line Corporation (Transco), pursuant to Section 7(b) of the Natural Gas Act, 15 U.S.C. 717f(b), and issuing certificates of public convenience and necessity, under Section 7

(c) of the Act, 15 U.S.C. 717f(c), for the sale of the same volume of gas to petitioner (Natural). The court held that the Commission failed to consider all the factors relevant to the question of abandonment.

1. In the late 1940's, the operators of the La Gloria Field, a newly-developed natural gas production area in southern Texas, negotiated contracts with Transco and Natural. The contracts specified that a certain quantity of gas would be sold to each pipeline over a 20-year period. After a few years of operation, it became evident that the full production of the La Gloria Field was insufficient to provide the quantities specified in both contracts. The producers began to reduce their deliveries to Natural and attempted to terminate their contracts with Natural.

Natural filed complaints with the Commission. Transco, alleging that the disposition of Natural's complaints would affect its right to receive the volumes of gas specified in its own contracts with the producers, petitioned to intervene. The Commission permitted Transco to intervene and, after a hearing, ruled that the producers must continue to deliver the gas called for by their contracts with Natural.

While petitions for review were pending in the court of appeals, the parties agreed upon a compromise settlement, which took the form of an amendment to Natural's contract with the producers. Natural agreed to an immediate reduction in the volume of gas called for in its contract, and the producers agreed in return to dedicate all their reserves in the La Gloria Field to Natural, subject

only to existing contractual commitments to other pipelines such as Transco. Transco's contract was unaffected; it was to continue to receive the full volume of gas called for by the contract until its expiration in 1971. Transco did not object to the settlement agreement. The Commission approved the settlement in 1958, finding that it was "necessary and appropriate in the public interest, and in the administration of the Natural Gas Act" (20 FPC 208, 210).

2. In accordance with the settlement, the La Gloria producers sought permission to discontinue their sales of gas to Transco upon expiration of its contract in 1971 and to commence sales of the gas to Natural. After a hearing and an initial decision by a hearing examiner, the Commission authorized the abandonment of sales to Transco and certificated the sales to Natural.

The Commission found "the fair import of the settlement to be that Transco was to continue to get its 81,000 Mcf/day until its contract expired in 1971, and abandonment of the producer-Transco sale was permitted, and Natural was to get all gas the field could produce, other than that sold to Transco and others under then existing contracts" (Pet. App. A24). Transco benefited from the arrangement, because it was "able to take its full contract quantity for the life of its contract, even though Natural's quantity was cut for that period" (*id.* at A25).

The Commission concluded that "the public convenience and necessity permits abandonment" (*ibid.*);

a contrary conclusion would disregard a "settlement which we approved as being in the public interest" (*ibid.*). Because "the pipeline industry [must] be able to plan and execute long-range gas supply acquisition programs" (*id.* at A26), an order abrogating a Commission-approved settlement would "ultimately redound to the detriment of the industry we regulate and the customers it serves" by adding to the existing uncertainty of contract rights within the regulatory structure and by disrupting "the orderly functioning of the interstate pipeline industry" (*id.* at A27).

The Commission accordingly determined that, in order to encourage pipelines "to manage their independent gas supply acquisition programs with as little external interference as the public convenience and necessity permit" (*ibid.*), it would not abrogate an approved settlement agreement except upon "a showing of unequivocal public necessity" (*ibid.*). It concluded that no such showing had been made in this case. "[B]oth pipelines are in short supply of natural gas and each is rendering less than full service to its customers. The loss of this gas to either pipeline will result in a diminution of its ability to continue even current levels of service" (*ibid.*).

3. The court of appeals held that, while a Commission-approved settlement agreement "must be accorded significant weight in the determination of the overall public interest" (*id.* at A10), "[p]rimary importance must be given to a broadly conceived comparison of the two natural gas systems and the public

markets they serve" (*id.* at A10-A11). It accordingly set aside the Commission's order and remanded the case for a redetermination of the abandonment issue based upon the court's view of the relevant public interest considerations.[1]

4. In view of the interlocutory nature of the court of appeals' order, which leaves open the possibility that the Commission may reach the same conclusion on the question of abandonment even under the court's standards,[2] the Solicitor General determined not to file a petition for a writ of certiorari at this stage of the proceeding. Although that determination does not mean that we oppose the granting of Natural's petition for a writ of certiorari or that the Commission accepts the court of appeals' view of the applicable legal standards, it does reflect the Commission's judgment that, in the present posture of the case, the decision of the court of appeals does not seriously interfere with the Commission's per-

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[1] Thereafter, on February 22, 1974, the Commission issued an interim order determining "the allocation of gas between the two pipeline companies during the interim period during which further proceedings are to occur," and deferring until further order of the Commission consideration of certain motions by Transco and Natural.

[2] Further inquiry might show, for example, that Transco's "need" for some of the gas is slightly greater than Natural's but that the difference, even if given "primary importance," does not outweigh the substantial long-range public interest in honoring the terms of the approved settlement agreement.

formance of its regulatory responsibilities under the Natural Gas Act.

Respectfully submitted.

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